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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/895,457

Filing Date: June 29, 2001

Appellant(s): MORIMOTO, NOBUYOSHI

Robert C. Kowert (Reg. No. 39,255)
For Appellant

EXAMINER'S ANSWER

This is in response to the Appeal Brief filed on March 21, 2011 appealing from the Office action mailed on September 15, 2010.

(1) *Real Party in Interest*

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) *Related Appeals and Interferences*

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) *Status of Claims*

The following is a list of claims that are rejected and pending in the application:

Claims 1-44.

(4) *Status of Amendments After Final*

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) *Summary of Claimed Subject Matter*

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) *Grounds of Rejection to be Reviewed on Appeal*

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the

subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) *Claim Appendix*

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) *Evidence Relied Upon*

The following is a listing of the evidence (e.g., patents, publications, Official Notice, and admitted prior art) relied upon in the rejection of claims under appeal.

US 2002/0002531	Lustig et al.	01-2002
US 6,871,190	Seymour et al.	03-2005

(9) *Grounds of Rejection*

The following grounds of rejection are applicable to the appealed claims:

Claim Objections

1. Claims 28, 40 and 42 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claims, or amend the claims to place the claim(s) in proper dependent form, or rewrite the claims in independent form.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lustig et al (hereinafter Lustig), U.S. Patent Application Publication No. 2002/0002531, in view of Seymour et al. (hereinafter Seymour), U.S. Patent No. 6,871,190.

Regarding to claim 1, Lustig discloses a method for negotiating improved terms of sale for a product or service being purchased using an the Internet web site, the method comprising:

using one or more computers to perform:

receiving information indicating one or more default standards for a purchase, wherein said default standards specify product or service characteristics that are preferred by said purchaser (*paragraphs [0070]- [0073], the User operates the User's computer to connect to the Publisher's Web site to submit an original offer with a selected indicator adjacent the description of each offer, the indicator indicates that by selecting the indicator, the User commits to accepting a better offer when the better offer is available, the indicator also indicates that by selecting the indicator, the User commits to accepting the original offer unless a better offer is available; note that the*

original offer and the selected indicator submitted by the user is considered equivalent to the default standard for a purchaser in the claimed invention).

subsequent to said receiving, detecting an issuance of a commitment to purchase, by said purchaser, said product or service according to initial terms of sale (*paragraph [0070]-[0071], User navigates the Publisher's Web site to submit an "original offer"*);

making an offer to said purchaser to negotiate said improved terms of sale for said product or service (*paragraph [0073], the User can select the indicator to commits to accept a better offer when the better offer is available*) ;

in response to said purchaser accepting said offer:

searching for sale offers for said product or service (*paragraph [0078]-[0079], the Order Server receives the original offer and transmits it to the Matching Engine to initiate and facilitate a matching process; matching program accesses the available offer in the matching database, compares the available offer with the original offer to determine whether the better offer is available; the Matching Engine accepts the better offer on behalf of the User if the better offer is available*);

comparing terms of sale for sale offers located from said searching to said initial terms of sale and to said default standards (*paragraph [0078]-[0079], compares the available offer with the original offer to determine whether the better offer is available; the Matching Engine accepts the better offer on behalf of the User if the better offer is available*); and

based on said comparing, presenting one of the sale offers located from said searching to the purchaser, wherein the presented sale offer included said improved terms of sale and meets said default standards (*paragraph [0042]-[0044]*).

Lustig does not disclose wherein said searching, comparing and presenting occur ***within a specified time***. However, Seymour discloses wherein said searching, comparing and presenting occur ***within a specified time*** (*column 7, lines 40-55, the bidder submits bid information, the bidder agent conducts a search for the plurality seller sites to find the seller sites contain matching criteria specified by the bidder in the bid information; the bidder agent conducts the search with a predetermined time period, the bidder agent is arranged to terminate the search for seller sites after the predetermined time period has lapsed*). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Lustig's to adopt the teaching of Seymour above, for the purpose of providing time consuming to the purchaser so that the purchaser can receive the ordered product or service limiting within a specific of time.

Regarding to claims 2-5, Lustig further discloses wherein said detecting comprises detecting said purchaser entering a credit card number, a pre-paid account number, a gift certificate number, an escrow account number, or a bank guaranty number (*paragraph [0047]*); detecting said purchaser viewing a particular web page; detecting comprises detecting said purchaser accessing a particular URL (*paragraph [0070]*); *detecting comprises detecting said purchaser clicking an icon to confirm order* (*paragraph [0072]*).

Regarding to claim 6, Lustig further discloses wherein said making an offer to said purchaser comprises displaying said contract on a screen of a computer used by said purchaser to purchase said product or service using an Internet web site (*paragraph [0072]*).

Regarding to claim 7, Lustig further discloses executing said commitment to purchase (*paragraph [0073]*).

Regarding to claim 8, wherein said commitment to purchase comprises a purchase order for which payment has been guaranteed by said purchaser (*paragraph [0047]*).

Regarding to claim 9, Lustig further discloses wherein said improved terms of sale comprise one or more of the following: a better price, a better delivery, a better warranty or a better return policy than said initial terms of sale (*paragraph [0074], a better price*).

Regarding to claim 10, Lustig further discloses wherein said making an offer to said purchaser comprises: reading information associated with said commitment to purchase; determining that said commitment to purchase represents an area of interest for an improved terms of sale service provider; and in response to determining that said commitment to purchase represents an area of interest for said improved terms service provider: making said offer to said purchaser (*paragraph [0072]*).

Regarding to claim 11, Lustig further discloses wherein said searching for sale offers for said product or service comprises conducting an auction amongst a plurality of suppliers for said product or service (*paragraph [0078]*).

Regarding to claim 12, Lustig further discloses entering a legal contract with said purchaser to supply said product or service under said improved terms (*paragraph [0079]*).

Regarding to claim 13, Lustig further discloses wherein said searching for sale offers for said product or service comprises searching a database of preferred suppliers for said product or service (*paragraph [0078]*).

Regarding to claims 14-26, Lustig discloses a system for negotiating improved terms of sale for a product or service being purchased over a computer network, the system comprising: a computer program; a web site server computer; wherein said computer program is executable on a client computer system by a purchaser to connect with the web site server (*paragraphs [0048]-[0053], The Publisher Server 140*), and executing the method as described in claims 1-13 above.

Regarding to claim 27, Lustig further discloses wherein said client computer system is one or more of the following: a personal computer, a laptop computer, a notebook computer, an Internet-enabled cellular phone, an Internet-enabled personal digital assistant, or an Internet-enabled television (*paragraph [0038]*).

Claim 28 is written in carrier medium that parallel the limitations found in claim 1 above, therefore, is rejected by the same rationale.

Claims 29-40 contain similar limitations found in claims 1-13 above, therefore, are rejected by the same rationale.

Claims 41, 42, and 44 contain similar limitations found in claim 1 above, therefore, are rejected by the same rationale. Moreover, Lustig and Seymour do not

disclose intercepting a message over the Internet, wherein the message includes commitment to purchase. However, intercepting a message over the Internet, wherein the message includes commitment to purchase is well known in the art. Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify Lustig's in combining with Seymour to adopt the well-known feature above, for the purpose of providing more efficiency and convenient in communication over the Internet.

Regarding to claim 43, Lustig further discloses wherein executing said contract comprises contacting said purchaser with a confirmation of said product purchase (*paragraph [0084]*).

(10) Response to Argument

Claims 1, 4-7, 9, 13, 28, and 43

In response to the Appellant's argument regarding to claim 1 that that Lustig in view of Seymour fails to teach (1) receiving information indicating one or more default standards for a purchaser, where the default standards specify product or service characteristics that are preferred by the purchaser, (2) comparing terms of sale for sale offers located from searching for sale offers to (a) the initial terms of sale and (b) the default standards, and (3) presenting one of the sale offers located from searching for sale offers to the purchaser, where the presented sale offer includes improved terms of sale and meets the default purchasing standards, examiner submits that:

(1) receiving information indicating one or more default standards for a purchaser, where the default standards specify product or service characteristics that are preferred by the purchaser

The Appellant's Specification in page 15, lines 18-28 describing "default purchasing standards" as the following: the purchase selects different default standards for goods or services to be purchased, e.g., allow the purchaser to instruct the broker-agent to reject any offers with the higher price, the broker-agent automatically rejects the offers that do not conform to the purchaser default settings. Lustig teaches the User operates the User's computer to connect to the Publisher's Web site to submit an original offer with a selected indicator adjacent the description of each offer, the indicator indicates that by selecting the indicator, the User commits to accepting a better offer when the better offer is available, the indicator also indicates that by selecting the indicator, the User commits to accepting the original offer unless a better offer is available (see paragraphs [0070]- [0073]). The indicator selected by the User, instructs the matching program to accept the better offer on behalf of the User. Therefore, the original offer and the selected indicator is considered equivalent to the purchaser default settings as describing in the Appellant's Specification. Therefore, Lustig does teach receiving information indicating one or more default standards for a purchaser, where the default standards specify product or service characteristics that are preferred by the purchaser.

(2) comparing terms of sale for sale offers located from searching for sale offers to (a) the initial terms of sale and (b) the default standards

Lustig teaches the matching program, upon receiving the original offer, retrieves the available offer from the matching database and compares the available offer with the original

offer to determine whether the better offer is available, if the better offer is available, accepts the better offer on behalf or the user originating the request, thus by accepting the better offer, the matching program rejects the offer matching with the original offer. Moreover, the matching program accepts the original offer if the better offer is not available, thus, by accepting the original offer, it is obvious that the matching program rejects the offers that do not match with the original offer (see paragraph [060]-[0061]). Moreover, Lustig teaches that the user selects the First Offer as the original offer that is sent to the Order Server, the matching program compares the First Offer with the Second Offer and the Third Offer, the matching program determines that the better offer is available as the Second Offer (i.e. the Second Price is lower than the First Price and the Third Price), the matching program accepts the Second Offer on behalf of the user, the matching program also sends the response to the Order Server indicates that the matching program has accepted the Second Offer on behalf of the user (see paragraph [0082]). Thus, by accepting only the Second Offer with a lower price, it is obvious that the matching program rejects the First Offer and Third Offer on behalf of the user. **Therefore, Lustig does teach comparing terms of sale for sale offers located from searching for sale offers to (a) the initial terms of sale and (b) the default standards.**

(3) presenting one of the sale offers located from searching for sale offers to the purchaser, where the presented sale offer includes improved terms of sale and meets the default purchasing standards

Lustig teaches the indicator indicates that by selecting the indicator, the User commits to accepting a better offer when the better offer is available, the better offer being similar with regard to at least one parameter (e.g., the product) and more optimal with regard to at least one

the other parameters (e.g., the price), than the original offer and the other offers (paragraph [0073]). Therefore, **Lustig does teach presenting one of the sale offers located from searching for sale offers to the purchaser, where the presented sale offer includes improved terms of sale and meets the default purchasing standards.**

Claim 2

In response to the Appellant's argument that that Lustig in view of Seymour fails to teach *wherein said detecting comprises detecting said purchaser entering* a credit card number, a pre-paid account number, a gift certificate number, an escrow account number, or a bank guaranty number, examiner submits that Lustig teaches *each user desiring to accept an offer published by the Publisher has associated user information* which is collected a part of registration process, the user information includes credit card number, expiration date, debit card account and authorization code (paragraph [0047]). Therefore, **Lustig does teach wherein said detecting comprises detecting said purchaser entering** a credit card number, a pre-paid account number, a gift certificate number, an escrow account number, or a bank guaranty number.

Claim 3

In response to the Appellant's argument that that Lustig in view of Seymour fails to teach *wherein said detecting comprises detecting said purchaser accessing a particular web page,* examiner submits that Lustig teaches that the Web page not only presents the offers, but also provides access to functionality described below. The functionality can be accessed in this embodiment through a hypertext link included as part of the Web page. To inform the User of

the available functionality, the Web page displays a suitable indicator (e.g., a graphic button) adjacent the description of each offer. The indicator serves as a label for the hypertext link, indicating that if the indicator is selected, the functionality will be accessed and carried out with regard to the adjacent offer (paragraph [0072]). Therefore, Lustig does teach wherein said detecting comprises detecting said purchaser accessing a particular web page.

Claim 8

In response to the Appellant's argument that that Lustig in view of Seymour fails to teach a purchaser order for which payment has been guaranteed by said purchaser, examiner submits that Lustig teaches that the user is required to submit account information includes credit card number, expiration date, debit card account and authorization code, etc...before being presented with the offers (paragraph [0047]), thus user submit payment information before submitting a purchase order. Therefore, Lustig does teach a purchaser order for which payment has been guaranteed by said purchaser.

Claim 10

In response to the Appellant's argument that that Lustig in view of Seymour fails to teach determining that said commitment to purchase represents an area of interest for an improved terms of sale service provider, examiner submits that Lustig teaches that to inform the User of the available functionality, the Web page displays a suitable indicator (e.g., a graphic button) adjacent the description of each offer. The indicator serves as a label for the hypertext link, indicating that if the indicator is selected, the functionality will be accessed and carried out with

regard to the adjacent offer (paragraph [0072]). Therefore, Lustig does teach determining that said commitment to purchase represents an area of interest for an improved terms of sale service provider.

Claim 11

In response to the Appellant's argument that that Lustig in view of Seymour fails to teach wherein conducting said search for said improve terms comprises conducting an auction amongst a plurality of suppliers for said products, examiner submits that Lustig teaches that the matching engine conducts search for better offer by accessing the available offers in the matching database, compares the available offers from a plurality of vendors with the original offer to determine the better offer (paragraph [0078]); a plurality of offers from a plurality of vendors stored in the matching database (paragraph [0059]). Thus, the matching engine conducts an auction amongst a plurality of vendors. Therefore, Lustig does teach wherein conducting said search for said improve terms comprises conducting an auction amongst a plurality of suppliers for said products,

Claim 12

In response to the Appellant's argument that Lustig in view of Seymour fails to teach entering a legal contact with said purchaser to supply said product under said improved terms, examiner submits that Lustig teaches the Order server forward an indication to the User's computer that the user confirms to accept the original offer when the better offer is not available, and the completion of the transaction in accordance with the parameters of the original offer

(paragraph [0087]). Therefore, Lustig does teach entering a legal contact with said purchaser to supply said product under said improved terms.

Claims 14, 17-20, 22, 26, and 27

See the same as claims 1, 3, 4, 5, 6, 7, 1, 10, 13, 28, and 43 above.

Claim 15

See the same as claim 2 above.

Claim 16

See the same as claim 3 above

Claim 21

See the same as claim 8 above.

Claim 23

See the same as claim 10 above

Claim 24

See the same as claim 11 above.

Claim 25

See the same as claim 12 above.

Claims 29, 33, 34, 39, and 40

In response to the Appellant's argument regarding to claim 29 that that Lustig in view of Seymour fails to teach purchasing the particular item of service for the purchaser that the better price and charging the purchaser a new price between the particular price and the

better price, examiner submits that Lustig teaches each offer includes at least two parameters: identified the product, price, quality, delivery time; for example, Offer 1 (original offer) includes product ID, price 1, good quality; Offer 2 includes: same product as Offer 1, better price than Offer 1, same quality as offer 1; Offer 3 includes: same product as Offer 1, better price than Offer 2, bad quality. If the system accepts the Offer 2 as the better offer, the user will be charged the price between the price of the Offer 1 and the Offer 3 (better price). Therefore, Lustig obviously teaches purchasing the particular item of service for the purchaser that the better price and charging the purchaser a new price between the particular price and the better price.

Claim 30

In response to the Appellant's argument that that Lustig in view of Seymour fails to teach wherein if said original purchase is not available after said searching is complete, purchasing item for said purchaser at another price and charging the purser said particular price, examiner submits that Lustig teaches after searching and comparing the Second Offer with the available offers, the matching program determines that the better offer is not available, the matching program accepts the Second Offer with the Second Price (paragraphs [0085]-[0086]). Therefore, Lustig doe teach wherein if said original purchase is not available after said searching is complete, purchasing item for said purchaser at another price and charging the purser said particular price.

Claim 31

See the same as claim 2 above.

Claim 32

See the same as claim 3 above.

Claim 35

See the same as claim 12 above.

Claim 36

See the same as claim 8 above.

Claim 37

See the same as claim 10 above.

Claim 38

See the same as claim 11 above.

Claims 41 and 42

See the same as claim 29 above. Moreover, in response to appellant's arguments regarding the well-known statement recited in rejecting claims 41 and 42, examiner submits that the appellant has not submitted any rebuttal of the well-known statement, the appellant has not presented any arguments that the feature is not well known. The appellant stated "the examiner does not cite any prior art that teaches or suggests intercepting a message to delay a purchase for an predetermined amount of time." This does not constitute a proper challenge to the Official Notice.

Claim 44

See the same as claim 29 above, Moreover, in response to the applicant's argument regarding to claim 44 that Lustig does not teach a plurality of broker-agent program performing

multiple searches in parallel for the better price, examiner submits that the matching program organizes, stores, and retrieves a plurality of available offers from a matching database, compares the available offers with the original offer to determine the better offer, thus, *retrieving and comparing a plurality of available offers to determine the better offer is considered equivalent to performing multiple searches in parallel for better price.*

(11) *Related Proceedings Appendix*

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3684

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Nga B. Nguyen/
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